IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

MFA.No. 251 of 1998(B)

OPMV.733/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI

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APPELLANT/PETITIONER:

K.ABDURAHIMAN ALIAS ABDU, S/O.AHAMMED, MALADINHIYIL HOUSE, VAZHAKKAD, ERNAD TALUK.

BY ADV. SRI.K.M.SATHYANATHA MENON
SRI.R.RAJESH (K)

RESPONDENTS/RESPONDENTS:

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1. SIDDIQUIL AKBAR, S/O.ABDURAHIMAN, DRIVER OF JEEP KLL 3467, AMAKKODE HOUSE, P.O.VAZHAKKAD, ERNAD TALUK.

2. K.ABDU, S/O.AHAMMEDKUTTY, KAVUNGAL HOUSE, P.O.VAZHAKKAD, MALAPPURAM DT.

3. THE NEW INDIA ASSURANCE CO. LTD., RAILWAY STATION ROAD, FEROKE 67 631.

R3 BY ADV. SRI.A.R.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 6/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.251 of 1998

Dated, this the 6th day of November, 2007

JUDGMENT

Petitioner in O.P.(MV) No.733/1991 on the file of the Motor Accidents Claims Tribunal, Manjeri is the appellant. Appellant filed a petition claiming compensation alleging that he sustained injuries in a motor vehicle accident. It was averred that the appellant was travelling in a jeep bearing registration No.KLL 3467. It was also averred that when the vehicle reached the place of accident it capsized on account of the rash or negligent driving of the vehicle by the driver. Appellant impleaded the owner, driver and insurer of the vehicle. First respondent driver raised a contention that there was no negligence on his part. It was contended that because of the pot hole in the road, the accident occurred though he was driving the vehicle with care and caution. The second respondent owner remained exparte. The insurer also disputed the negligence alleged against the driver and also the quantum of compensation claimed. Appellant was examined as PW1. Exts.A1 to A4 marked. The Tribunal found that accident occurred due to the negligence of the driver. It also found that for the injuries sustained the appellant was entitled to get Rs.37,482/- but the Original Petition was dismissed on the ground that the appellant himself was the owner of the vehicle. Appellant contended that he was not the owner of the vehicle. Tribunal called for a report from the Tahsildar and the Tahsildar submitted a report to the effect that the

appellant and second respondent are one and the same persons. Relying on that report Tribunal dismissed the Original Petition.

2. Learned counsel appearing for the appellant has argued that Tahsildar submitted the report without conducting any enquiry and the appellant was not given a chance to prove that the report was not correct.

3. It is true that the notice issued from this Court also could not be served on the second respondent. Notice of second respondent was published in Newspaper. The report of the Tahsildar was not marked. But the Original Petition was dismissed solely based on that report. So there is much force in the contention of the appellant that he was not given an opportunity to examine the Tahsildar or adduce independent evidence to prove that the appellant and the second respondent are not one and the same persons. After considering all aspects of the matter I am of the view that it is only just and proper that the appellant be given one more opportunity to adduce evidence to prove that the appellant and the second respondent are not one and the same persons. For that purpose the case is to be go back.

In the result, appeal is allowed. Award passed by the Tribunal dismissing O.P.(MV) No.733/1991 is hereby set aside. Tribunal is directed to take O.P.(MV) No.733/1991 back to file and dispose of the same afresh after giving a reasonable opportunity to the appellant and the second respondent to establish their identity. The insurer also be given an opportunity to adduce further evidence, if so advised.

Parties shall appear before the Tribunal on 14.12.2007. Being an old case the Tribunal shall make every endeavour to dispose of the same as expeditiously as possible.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

M.F.A.No.251 of 1998

JUDGMENT

6th November, 2007.